

840 CMR: PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

840 CMR 27.00: STANDARD RULES FOR ORDERS TO PROTECT THE SYSTEM

840 CMR 27.00 is the standard rule for orders to protect the system and investigations and hearings related thereto promulgated by the Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, § 50 and M.G.L. c. 32, §§ 21 and 23(4). Except as may otherwise be provided by the Commission, or by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 27.00 is the standard rule for orders to protect the system and the conduct of investigative hearings to determine whether the investment and recordkeeping practices of any retirement board are being conducted with reasonable care, skill, prudence or diligence pursuant to M.G.L. c. 32, § 23(4).

27.01: Temporary Orders

The Commission, upon reasonable belief that the investment or recordkeeping practices of any retirement board are not being conducted with reasonable care, skill, prudence or diligence, may order such retirement board to take or cease from taking any action that in his/her judgment is necessary to protect the integrity of the retirement system. Any such order issued by the Commission shall remain in effect until such time as an investigation, hearing and finding of fact can be made pursuant to the provisions of 840 CMR 27.00 and M.G.L. c. 32, § 23(4). Violation of such orders shall be punishable as provided in M.G.L. c. 32, § 24.

27.02: Investigations and Hearings

(1) Investigations; Requests for Information. The Commission, upon reasonable belief of improprieties in the investment or recordkeeping practices of any retirement system, may initiate an investigation of such practices. In connection with such investigation the Commission may require the retirement board to provide information which may be deemed relevant thereto. Any such information contained in any document, paper, correspondence or other record maintained by the retirement board shall be provided to the Commission upon request. Any findings of fact made by the Commission or a designee pursuant to 840 CMR 27.03 shall reflect evidence obtained from such information as well as evidence presented at a hearing conducted pursuant to 840 CMR 27.02(2).

(2) Purpose of Hearings; Notice Requirements. In cases where the Commission has issued a temporary order pursuant to M.G.L. c. 32, § 23(4) and 840 CMR 27.01, an investigative hearing may be convened within 60 days thereafter. In all other cases the Commission may convene such hearing at any time; but in no case shall the retirement board whose investment or recordkeeping practices are under investigation be given less than 30 days prior notice of such hearing. The purpose of such investigative hearing shall be to determine whether the investment or recordkeeping practices of the retirement board are being conducted with reasonable care, skill, prudence or diligence. The notice of hearing shall set forth the retirement board practice(s) under investigation and outline the procedures to be followed in such hearing.

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(3) Parties, Procedures for Hearings. Upon notice from the Commission to any retirement board that an investigative hearing is to be held pursuant to 840 CMR 27.02(2), such retirement board personnel as are named in the notice shall appear to represent the retirement board before the Commission or a designee on the date specified therein. The Commission may also require parties not affiliated with the retirement board to appear at such hearing, if there is reason to believe that such party has influenced the investment or recordkeeping practices of the retirement board. The procedures to be followed in such investigative hearing shall be subject to the discretion of the Commission. Any retirement board or party who is requested to appear may be represented by counsel. Such parties shall be allowed to present evidence as to the propriety of the practice under investigation.

27.03: Findings of Fact

At the conclusion of the investigation conducted pursuant to M.G.L. c. 32, § 23(4) and 840 CMR 27.02, the Commission or a designee shall make such findings of fact as are warranted from the evidence collected during the course of the investigation and at the hearing. Such findings of fact shall be made in writing and a copy thereof shall be delivered to the retirement board, any other party requested to appear at the hearing and their counsel. Any permanent order to the retirement board to take or cease from taking any action shall be based upon such findings of fact.

27.04: Permanent Orders

After having conducted an investigation and hearing pursuant to M.G.L. c. 32, § 23(4) and 840 CMR 27.02 and making such findings of fact as are warranted by the evidence collected during the course of such investigation and hearing, the Commission may order the subject retirement board to take or desist from taking any action that in its judgment is necessary to preserve the integrity of the system. No such order shall obtain unless the Commission may reasonably conclude from such findings of fact that the investment or recordkeeping practices of the retirement board are not being conducted with reasonable care, skill, prudence or diligence. Violation of such order shall be punished as provided for in M.G.L. c. 32, § 24.

REGULATORY AUTHORITY

840 CMR 26.00: M.G.L. c. 7, §50; c. 32, §§ 21 and 23(4).